

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the Santa Clara Valley
Transportation Authority for an order
authorizing construction of an at-grade crossing
of Hamilton Avenue (82D-5.6) by the light rail
transit line of the Vasona Light Rail Project in the
City of Campbell, County of Santa Clara.

Application 01-01-003
(Filed January 5, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING
DENYING MOTION TO DISMISS**

Santa Clara Valley Transportation Authority (the Authority) moves to dismiss or amend its application on grounds that the Commission lacks jurisdiction to regulate the Authority's construction of an at-grade crossing for the Authority's light rail transit line in the City of Campbell.

The Authority has submitted a lengthy and erudite motion, quoting extensively from a 1914 law review article on the Legislature's intent in establishing the Railroad Commission. According to the Authority, the main function of the Commission is to regulate private companies engaged in public service, not governmental entities, citing *People ex rel. Public Utilities Commission v. City of Fresno* (1967) 254 Cal.App.2d 76. The Authority contends:

"The unbroken skein of law, statutory and decisional, stretching from the Railroad Commission's adolescence in the late 1800's to modern day, provides no authority for the Public Utilities Commission to regulate or restrict the placement of government agencies' light rail tracks. The Applicant, Santa Clara Valley Transportation Authority, has plenary power to determine where

and how its tracks will cross public roads and highways.”
(Applicant’s Motion, at 1.)

The Authority’s analysis and historical overview fail, however, to distinguish the California Supreme Court’s holding in *City of San Mateo v. Railroad Commission of California* (1937) 9 Cal.2d 1.

In *City of San Mateo*, as here, the issue was whether the Commission may direct government agencies to comply with Commission orders regarding the closure or separation of at-grade crossings. The cities of San Mateo, Redwood City and San Carlos sought review of the Commission’s order requiring closure or separation of grades at crossings in each of the three cities. Given that elimination of unnecessary grade crossings was in the public interest, the court asked what public authority was vested with power to compel compliance. The court answered the question with its finding that “[t]he Constitution and statutes have vested that power in the Railroad Commission.” (*City of San Mateo*, at 10.) The court found that physical closing of crossings is germane to the Commission’s regulation of rail safety matters.

The Commission’s Rail Crossing Engineering Section staff, in opposing the Authority’s motion for dismissal, argues that, under Pub. Util. Code § 1201, the Authority may not construct track across any road, highway, or street without review by the Commission. Staff contends further that, under Section 1202, the Commission “has the exclusive power” to determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use and protection of each crossing.

While the Authority acknowledges the Commission’s authority over railroads and street railroads, it argues that this authority does not extend to transit districts or the fixed guideways that a district operates. Staff responds

that, on the contrary, Pub. Util. Code § 99152, applicable to all public transit, makes the Commission's jurisdiction clear. Section 99152 states:

“Any public transit guideway planned, acquired, or constructed, on or after January 1, 1979, is subject to regulations of the Public Utilities Commission relating to safety appliances and procedures.

“The commission shall inspect all work done on those guideways and may make further additions or changes necessary for the purpose of safety to employees and the general public.

“The commission shall develop an oversight program employing safety planning criteria, guidelines, safety standards, and safety procedures to be met by operators in the design, construction, and operation of those guideways. Existing industry standards shall be used where applicable.

“The commission shall enforce the provisions of this section.”

As staff notes, the Legislature has granted the Commission specific jurisdiction over the rail operations of the Authority, and this jurisdiction is not disputed. Pub. Util. Code § 100168 states:

“The [Santa Clara County Transit District] shall be subject to the regulations of the Public Utilities Commission relating to safety appliances and procedures, and the commission shall inspect all work done pursuant to this part and may make such further additions or changes necessary for the purpose of safety to employees and the general public. The commission shall enforce the provisions of this section.”

Finally, staff notes that the crossing at Hamilton Avenue in the City of Campbell is both a light rail and a Union Pacific Railroad freight crossing. It is undisputed that the Union Pacific crossing falls within the Commission's jurisdiction. The Authority thus argues, in effect, that while the Commission could order Union Pacific to grade separate the Hamilton Avenue crossing for

safety reasons, it could not order the Authority to do so even through the same safety reasons are present. This reasoning is inconsistent with the holding in *City of San Mateo*.

This ruling takes official notice that the Commission in Order Instituting Rulemaking 02-01-009, filed January 9, 2002, has established a proceeding to explore the standards for safety certification for rail transit agencies and other public transit guideways. The proceeding will consider revisions to General Order 164-B to further assure the safety of such systems once they are placed in revenue service. To the extent that the Authority seeks to more clearly define the Commission's authority over public transit guideways, the comments it has filed here may be directed to that proceeding.

For the reasons set forth above, this ruling concludes that the Authority has failed to show that this application should be dismissed or, in the alternative, amended to apply limited Commission jurisdiction.

IT IS RULED that Applicant's Motion to Dismiss, or, Alternatively, Motion to Amend is denied.

Dated March 1, 2002, at San Francisco, California.

/s/ GLEN WALKER

Glen Walker

Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Denying Motion to Dismiss on all parties of record in this proceeding or their attorneys of record.

Dated March 1, 2002, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.